Supreme Court, U.S.
FILED
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In The

Supreme Court of the United States

MARY M. HOFF,

Petitioner,

v.

OFFICE OF PERSONNEL MANAGEMENT,

Respondent.

On Petition For Writ Of Certiorari To The United States Court Of Appeals For The Federal Circuit

PETITION FOR WRIT OF CERTIORARI

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QUESTION PRESENTED FOR REVIEW

I.

This case presents the question of whether the Due Process Clause of the United States Constitution has been abridged by a decision of the Court of Appeals for the Federal Circuit upholding the Opinion of the Merit Systems Protection Board which found that an individual who is receiving disability compensation pursuant to the Federal Employee's Compensation Act is not a federal employee.

PARTIES TO THE PROCEEDING

The caption of the case contains the names of all the parties.

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CITATION OF THE OFFICIAL REPORTS OF THE OPINIONS ENTERED IN THIS CASE

The Opinion of the Court of Appeals for the Federal Circuit was issued on February 18, 2005. The Opinion may not be cited as precedent. Appendix App. 1.

BASIS FOR SUPREME COURT JURISDICTION

The Opinion of the Court of Appeals for the Federal Circuit was issued on February 18, 2005 Appendix App. 1. Petitioner Mary M. Hoff ("Hoff") seeks review of that judgment on a writ of certiorari.

This Court has jurisdiction under 28 U.S.C. § 1254 to review on a writ of certiorari the judgment of a federal court of appeals.

CONSTITUTIONAL PROVISIONS INVOLVED IN THE CASE

Constitution of the United States, Amendment V, Due Process Clause states:

> No person shall be held to answer for a capital, or otherwise infamous crime, unless presentment or indictment of a Grand Jury, except in case arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb, nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of

law; nor shall private property be taken for public use without just compensation.

STATEMENT OF THE CASE

This case presents the question of whether the Due Process Clause of the United States Constitution has been abridged by a decision of the Court of Appeals for the Federal Circuit upholding the Opinion of the Merit Systems Protection Board finding that an individual who is receiving disability compensation pursuant to the Federal Employee's Compensation Act is not a federal employee.

On December 10, 2002, the Office of Personnel Management (hereafter "OPM") received an application for disability retirement from Hoff pursuant to 5 U.S.C. § 8337(a). Hoff has been on the roles of the Office of Workman's Compensation Program (hereinafter "OWCP") since 1991. Appendix App. 4.

The Office of Personnel Management (hereinafter "OPM") denied Hoff's application for disability benefits on the basis that it was untimely filed. On April 14, 2003, Hoff timely appealed to the Merit Systems Protection Board (hereinafter "MSPB") for review of the OPM decision in accordance with 5 U.S.C. § 8451(a)(2)(C). Appendix App. 2. The MSPB rendered its Initial Decision on August 5, 2003 affirming the denial of Hoff's application for disability retirement as untimely filed. Appendix App. 3.

Hoff timely filed a petition for review of the initial decision by the administrative judge. Appendix App. 8. This petition was denied on December 30, 2003. Pursuant to 5 U.S.C. § 7703, Hoff filed a request for review of the

MSPB decision to the Court of Appeals for the Federal Circuit. That court had jurisdiction over MSPB final orders or decisions pursuant to 28 U.S.C. § 1295(a)(9). Appendix App. 1. On February 18, 2005 the Court of Appeals affirmed without opinion, the decision of the MSPB. Appendix App. 1.

This petition for writ of certiorari follows.

Hoff asks that this Court grant her petition for a writ of certiorari to conform the Court of Appeals decision to existing Supreme Court authority and to harmonize the Court of Appeals result with federal statutes, its own decisional law as well as that of the Merit Systems Protection Board, and to correct a result that, if undisturbed, will abridge Hoff's Due Process rights.

ARGUMENT

A. The Court Of Appeals Decision Fails To Follow Federal Statutes And Opinion Of The Supreme Court And Conflicts With Previously Rendered Opinions Of The Circuit And With Opinions Of The Merit Systems Protection Board.

Throughout her review and appeals, Hoff has contended that her placement on the workman's compensation roles of the OWCP has not changed her status as a federal employee. The OWCP has denied Hoff Due Process by refusing to consider an application for disability retirement which was filed 10 years after her transfer from the roles of the United States Air Force to the worker's compensation roles of the OWCP in 1991. Hoff asserts that the OPM decision was contrary to existing case law of the

OPM and MSPB and that she was a federal employee at the time of her application for disability retirement.

1. The Court Of Appeals Decision Fails To Comport With Federal Statutes.

When an injured federal employee is placed on the roles of OWCP, that individual remains a federal employee. The individual is in a leave of absence without pay for the period of time that the individual is receiving benefits from OWCP. The relevant portion of 5 U.S.C. § 8332(f) provides that:

> An employee or former employee who returns to duty after a period of separation is deemed, for the purpose of this subsection, to have been in a leave of absence without pay for that part of the period in which he received benefits [from OWCP]. . . .

5 U.S.C. § 8332(f)

The Court of Appeals, in considering the decision of the MSPB, clearly disregarded the language of § 8332(f) which obviously establishes that an individual who is receiving benefits from OWCP is in a leave of absence without pay status. Since it has remained undisputed that Hoff is receiving workers' compensation benefits from OWCP, then logic dictates that § 8332(f) places her in a leave of absence without pay status, and she is still therefore considered to be a federal employee by statute.

Further, the Court of Appeals has disregarded the language of OPM's own governing regulation, 5 C.F.R. § 353.107 which clearly states that a claimant absent from an agency due to a compensable injury is to be *treated as*

though he or she had never left. (Emphasis added.) Hoff would contend that this statute clearly supports her argument that while she was a claimant (her status as an OWCP claimant has never been disputed by the Agency) she was an employee and was to be treated as though she had never left.

The Federal Employees' Compensation Act (FECA), 5 U.S.C. § 8101 *et seq.*, provides that if a government employee is injured on the job, the employee is entitled to certain benefits, including compensation for the injury. One of the conditions of continuing to receive those benefits is that a partially disabled employee must be willing to accept suitable work when the agency offers such work. 5 U.S.C. § 8106(c)(2). See also 20 C.F.R. § 10.515(b). However, if the employee refuses to accept such work then this refusal will result in the termination of the employee's FECA benefits. But, if the employee's disability renders the employee eligible for disability retirement, the employee is then free to refuse the offer of suitable work and may elect to take disability retirement instead of the FECA benefits.

The statute refers to an individual who is receiving FECA benefits as an employee. It does not designate an individual who is receiving FECA benefits as anything other than an employee. The Court of Appeals ruling affirming the administrative law judge's order finding that Hoff was not an employee at the time she filed her application for disability retirement flies in the face of the plain language of the statute. The statute in this instance is referring to an individual who was injured while in federal service, and has, as a result of that injury, become partially disabled. When the statute speaks of the partially disabled employee being offered a duty position, it

does not state that the injured person is not an employee, but rather refers to them as partially disabled employees.

If the ruling of the administrative law judge is allowed to stand, then no individual who is receiving federal disability compensation benefits pursuant to the FECA can be a federal employee. The language of 5 U.S.C. § 8106(c)(2) does not imply that there is a status for an individual receiving disability compensation benefits other than that of employee. Therefore, by the clear meaning of § 8106(c)(2) Hoff was a partially disabled employee who was receiving disability compensation benefits under the provisions of § 8106(c)(2). At the time Hoff applied for disability retirement, she was simply pursuing the option of applying for disability retirement pursuant to § 8106(c)(2).

Therefore, the affirmation of OPM's initial decision by the Court of Appeals has failed to correctly interpret and apply the statutory language of 5 C.F.R. § 353.107, 5 U.S.C. § 8106(c)(2) and 5 U.S.C. § 8332(f), each of which clearly states that a person receiving federal compensation benefits from OWCP is to be considered to be in a leave of absence without pay status. Had the Court of Appeals properly applied the statutory language to its analysis of both the initial decision and the Final Order, then it would have found Hoff to be a federal employee. Hoff asserts to this Court that had she been found to be a federal employee in leave of absence without pay status at the time she filed her application for disability retirement, then her application for disability retirement would have been found to have been timely filed.

2. The Court Of Appeals Decision Conflicts With Opinions Of The Supreme Court.

In arriving at its decision to affirm the final order of the MSPB, the Court of Appeals appears to have disregarded this Court's rulings concerning the interpretation of the meaning of a statute. As cited herein, 5 U.S.C. § 8332(f) establishes that when an employee returns to duty after a period of separation for which that employee has received benefits from OWCP, then that the employee is deemed to have been in a leave of absence without pay for that part of the period in which he or she received benefits from OWCP.

"It is elementary that the meaning of a statute must, in the first instance, be sought in the language in which the act is framed, and if that is plain, and if the law is within the constitutional authority of the law-making body which passed it, the sole function of the courts is to enforce it according to its terms." *Caminetti v. United States*, 242 U.S. 470, 485-86, 37 S. Ct. 192, 194, 61 L. Ed. 442, 452-453 (1917) (citations omitted.)

The language of § 8332(f) is very plain and quite simply declares that an individual who is receiving compensation benefits from OWCP is a federal employee. As this Court held in *Hamilton v. Rathbone*, "where the language is plain and admits of no more than one meaning the duty of interpretation does not arise and the rules which are to aid doubtful meanings need no discussion." See *Hamilton v. Rathbone*, 175 U.S. 414, 421, 20 S. Ct. 155, 158, 44 L. Ed. 219, 222 (1899).

There can be no more than one meaning to the language of § 8332(f). The Court of Appeals failed to properly apply precedent of this Court when it affirmed the Final

Order of the MSPB. Therefore, Hoff was a federal employee by the plain meaning of that statute when she applied for disability retirement. The Court of Appeals should have found that she was a federal employee at the time of her application for disability retirement and granted her the relief she sought.

3. The Court Of Appeals Decision Conflicts With Its Own Previously Rendered Decisions And Those Of The Merit System Protection Board.

In a review of a decision by the MSPB, the Court of Appeals will uphold the Board's decision unless it is (1) arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law; (2) obtained without procedures required by law, rule or regulation having been followed; or (3) unsupported by substantial evidence. 5 U.S.C. § 7703(c); *Fernandez v. Dep't of the Army*, 234 F.3d 553, 555 (Fed. Cir. 2000).

The Court of Appeals should have found that the MSPB's finding was arbitrary, capricious and is not in accordance with the law. In his Opinion, the Administrative Law Judge cites to *Glenn v. Office of Personnel Management*, 37 M.S.P.R. 500, 502 (1988) for the premise that "[i]t is patently clear that the appellant's placement on the OWCP rolls did not undo her separation." Appendix App. 4. However, contrary to the Administrative Law Judge's position, instead of standing for the proposition that placement on OWCP rolls means the employee is separated from federal service, *Glenn* stands for the proposition that an Agency is under no obligation to inform an employee at the time of separation of the statutory deadline for filing a retirement application pursuant to

Glaspell v. Office of Personnel Management, 20 M.S.P.R. 375 (1984). The Board, in *Glenn*, found:

> The administrative judge properly found that the VA had no obligation to inform the appellant, at the time of her separation, of the statutory deadline for filing a retirement application. *Glaspell,* 20 M.S.P.R. at 376. The appellant does not allege that during the one year filing period, she sought information from the VA regarding her disability retirement rights and that it either failed to provide her with the requested information or gave her incorrect advice. In fact, the appellant elected to apply for OWCP benefits rather than to file an application for disability retirement. See 5 U.S.C. §8116(b). The appellant did not contact the VA until after the statutory deadline for filing her disability retirement application had expired. *Thus, the appellant has failed to show that her untimely filing was caused by misinformation furnished to her by the VA.* (Emphasis added.)

Glenn 37 M.S.P.R. at 500.

Thus, the Initial Decision failed to cite appropriate case law or statute in denying that the Appellant's contention that her placement on the OWCP rolls continued her status as an employee. In particular, the MSPB failed to address the issue raised by Hoff that since she was receiving disability compensation from the Department of Labor, she was a federal employee by statute and case law. In addition, neither OPM nor the MSPB addressed Hoff's argument that while on the OWCP's disability compensation rolls, Hoff continues to accrue both leave and retirement benefits just as any other federal employee. See *Losh v. Office of Personnel Management*, 37 M.S.P.R. 150 (1988).

Neither the Initial Decision nor the Opinion addressed the fact that an employee who is in leave without pay status prior to her removal from position subject to Civil Service Retirement System is entitled to disability retirement. See *Kimbrough v. Office of Personnel Management*, 63 M.S.P.R. 263 (MSPB 1994).

The Court of Appeals previously held in *Losh v. Office of Personnel Management*, 37 M.S.P.R. 150 (1988):

> in order for an individual to receive service credit for those periods during which he or she received OWCP benefits, he or she must return to duty upon cessation of those benefits . . . (citations omitted.)

Losh, 37 M.S.P.R. at 150.

In *Losh* the appellant was appealing the administrative law judge's finding that he was not entitled to service credit for the period of time he received OWCP benefits because he had elected to receive disability retirement benefits in place of OWCP compensation benefits and hence had been separated from his position with the Department of Defense because he had retired. *Losh*, 37 M.S.P.R. at 150. However, that is not the present situation. Hoff was and is receiving OWCP compensation benefits.

Further, the Court of Appeals disregarded its own holding in *Bracey v. Office of Personnel Management*, 236 F.3d 1356 (U.S. App. 2001) that:

> FECA provides that if a government employee is injured on the job, the employee is entitled to certain benefits, including compensation for the injury. One of the conditions of continuing to receive those benefits is that a partially disabled employee must be willing to accept "suitable work" when the agency offers such work. . . . The

> employee's refusal to accept such work results in termination of his FECA benefits. If the employee's disability renders the employee eligible for disability retirement, however, the employee is free to refuse the offer of such work and to take disability retirement instead of the FECA benefits.

Bracey, 236 F.3d at 1358.

The Court of Appeals' own opinion in *Bracey* describes an individual receiving federal disability compensation under FECA as an employee. The Court has failed to conform its decision in *Hoff v. OPM* to its own prior holdings. Ms. Hoff attempted to take disability retirement and was denied the right to apply for those benefits.

In addition, the Court of Appeals considered the differences between OWCP definitions of "employability" and OPM definitions of either "accommodation" or an "existing vacant position" in *Bracey v. OPM*:

> OWCP may find that an employee is capable of working part-time and is therefore ineligible for full benefits, while the Board finds that the part-time duty does not constitute an accommodation in the employee's position or an existing vacant position and that the employee is therefore entitled to a disability retirement annuity. E.g., *Sangenito v. Office of Personnel Management*, 82 M.S.P.R. 520, PP8-10 (1999), *aff'd on recons.*, 85 M.S.P.R. 211 (2000). It also appears that OWCP could determine that a set of ungraded, unclassified set of duties constitutes "suitable work" under its own regulations, but this set of duties would not constitute a "vacant position" to which an employee could be reassigned for purposes of

> determining his eligibility for disability retirement.

Bracey, 236 F.3d at 1359.

The Court of Appeals clearly indicates in *Bracey* that it considers an individual who is receiving OWCP disability compensation benefits to be an employee because if they were not an employee while receiving OWCP disability compensation benefits, then OWCP would be unable to "find that an employee is capable of working part-time and is therefore ineligible for full benefits." *Bracey*, 236 F.3d at 1359. If Bracey was not an employee, then the Court of Appeals was incorrect in its finding in *Bracey*. However, as the holding in *Bracey* has not been overturned, then logic dictates that Hoff, who is also receiving OWCP disability compensation benefits, is also an employee.

Therefore, the Court of Appeals was incorrect in determining that the MSPB was correct in its determination that Ms. Hoff did not fulfill the statutory requirements for the filing of a disability retirement application. Because Hoff has clearly demonstrated that she was a federal employee at the time she applied for disability retirement, the decision of the MSPB was due to be reversed by the Court of Appeals and remanded for that action necessary to allow Hoff to apply for disability retirement.

CONCLUSION

For the foregoing reasons, the Petition for a Writ of Certiorari should be granted.

Respectfully submitted,

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NOTE: Pursuant to Fed. Cir. R. 47.6, this disposition is not citable as precedent. It is a public record.

UNITED STATES COURT OF APPEALS FOR THE FEDERAL CIRCUIT

04-3158

MARY M. HOFF,

Petitioner,

v.

OFFICE OF PERSONNEL MANAGEMENT,

Respondent.

JUDGMENT

(Filed Feb. 18, 2005)

ON APPEAL from the Merit Systems Protection Board

IN CASE NO(S. AT831E030503-I-1

This CAUSE having been heard and considered it is

ORDERED and ADJUDGED:

AFFIRMED. *See* Fed. Cir. R. 36.

Per Curiam (RADER, *Circuit Judge*, PLAGER, *Senior Circuit Judge*, and DYK, *Circuit Judge*.

ENTERED BY ORDER OF THE COURT

DATED FEB 18 2005 , /s/ Jan Horbaly
Jan Horbaly, Clerk

UNITED STATES OF AMERICA
MERIT SYSTEMS PROTECTION BOARD
ATLANTA REGIONAL OFFICE

MARY M. HOFF,
Appellant,

DOCKET NUMBER
AT-831E-03-0503-I-1

v.

OFFICE OF PERSONNEL MANAGEMENT,
Agency.

DATE: August 5, 2003

(CSA 4 026 898)

Michael J. Petersen, Esquire, Montgomery, Alabama, for the appellant.

Thomas L. Styer, Washington, D.C., for the agency.

BEFORE
Richard P. Klein
Administrative Judge

INITIAL DECISION

INTRODUCTION AND JURISDICTION

On April 14, 2003, the appellant timely appealed to the Board from the agency's March 12, 2003 reconsideration decision denying her application for disability retirement benefits on the basis that it was untimely filed. The Board has jurisdiction over this appeal. *See* 5 U.S.C. § 8337(d); 5 C.F.R. § 831.110.

The appellant initially requested a hearing in this case. However, on June 17, 2003, the appellant withdrew her request and asked that the case be adjudicated on the

record as it currently existed. *See* Appeal File, Tab 8. And, for the reasons set forth below, the agency's reconsideration decision is AFFIRMED.

ANALYSIS AND FINDINGS

The appellant bears the burden of proving, by preponderant evidence,* that she filed her application for disability retirements in a timely manner or that she is entitled to a waiver of the filing deadline. *See Cheeseman v. Office of Personnel Management*, 791 F.2d 138, 140-41 (Fed. Cir. 1986), *cert. denied*, 479 U.S. 1037 (1987). In order to be timely, the appellant was required to file an application for disability retirement within one year after her separation date. 5 U.S.C. § 8337(b). And, mental incompetence is the only basis for waiving the statutory filing deadline. *Id.*; *Stevenson-Phillips v. Office of Personnel Management*, 48 M.S.P.R. 527, 529 (1991).

The appellant does not allege that she was mentally incompetent. And, the following facts are not in dispute. The appellant was separated by the application of reduction-in-force (RIF) procedures from the position of Medical Clerk, GS-4, by the Department of the Air Force effective April 5, 1991. *See* Appeal File, Tab 8. And, she was not employed by the Department of the Air Force or any other agency in the Federal government subsequent to this date. *Id.* However, she was placed on the rolls of the Office of Workers' Compensation Programs (OWCP) following the

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* A preponderance of the evidence is that degree of relevant evidence that a reasonable person, considering the record as a whole, would accept as sufficient to find that a contested fact is more likely to be true than untrue, 5 C.F.R. § 1201.56(c)(2).

RIF. Thus, she argues that her application for disability retirement which was received by the agency on December 10, 2002, was timely filed.

I disagree. It is patently clear that the appellant's placement on the OWCP rolls did not undo her separation. *See Glenn v. Office of Personnel Management*, 37 M.S.P.R. 500, 502 (1988). And, there was no obligation on her employer to advise her at the time of her separation of the statutory deadline for filing an application for disability retirement. *Id.* I also note that there is no allegation that the appellant sought information from the Department of the Air Force with respect to her disability retirement rights or that her employing agency gave her incorrect advice. *Id.*

The record reflects that, following her separation, the appellant elected to apply for OWCP benefits instead of filing for disability retirement. *Id.* Thus, her application for disability retirement was not filed within the one-year period that began with her separation from the Department of the Air Force on April 5, 1991. Accordingly, it was untimely filed. And, the appellant does not assert mental incompetence. Therefore, there is no basis for waiving the statutory deadline in this case. *See Crane v. Office of Personnel Management*, 55 M.S.P.R. 16, 18 (1992), *aff'd*, 996 F.2d 1235 (Fed. Cir. 1993) (Table).

DECISION

The agency's reconsideration decision is AFFIRMED.

FOR THE BOARD: /s/ Richard P. Klein
Richard P. Klein
Administrative Judge

NOTICE TO APPELLANT

This initial decision will become final on ***September 9, 2003***, unless a petition for review is filed by that date or the Board reopens the case on its own motion. This is an important date because it is usually the last day on which you can file a petition for review with the Board. However, if this initial decision is received by you more than 5 days after the date of issuance, you may file a petition for review within 30 days after the date you actually receive the initial decision. The date on which the initial decision becomes final also controls when you can file a petition for review with the Court of Appeals for the Federal Circuit The paragraphs that follow tell you how and when to file with the Board or the federal court. These instructions are important because if you wish to file a petition, you must file it within the proper time period.

BOARD REVIEW

You may request Board review of this initial decision by filing a petition for review. Your petition, with supporting evidence and argument, must be filed with:

The Clerk of the Board
Merit Systems Protection Board
1615 M Street, NW.,
Washington, DC 20419

if you file a petition for review, the Board will obtain the record in your case from the administrative judge and you should not submit anything to the Board that is already part of the record. Your petition must be postmarked, faxed, or hand-delivered no later than the date this initial decision becomes final, or if this initial decision is received by you more than 5 days after the date of issuance, 30

days after the date you actually receive the initial decision. If you fail to provide a statement with your petition that you have either mailed, faxed, or hand-delivered a copy of your petition to the agency, your petition will be rejected and returned to you.

JUDICIAL REVIEW

If you are dissatisfied with the Board's final decision, you may file a petition with:

The United States Court of Appeals
for the Federal Circuit
717 Madison Place, NW.
Washington, DC 20439

You may not file your petition with the court before this decision becomes final. To be timely, your petition must be *received* by the court no later than 60 calendar days after the date this initial decision becomes final.

NOTICE TO AGENCY/INTERVENOR

The agency or intervenor may file a petition for review of this initial decision in accordance with the Board's regulations.

CERTIFICATE OF SERVICE

I certify that the attached Document(s) was (were) sent by regular mail this day to each of the following:

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Montgomery, AL 36104

Agency's Representative

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Office of Retirement Programs
Reconsideration and Appeals Branch
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Employee Relations Division
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Washington, DC 20415

August 5, 2003
(Date)

/s/ Peggy Campbell
Peggy Campbell
Legal Assistant

Docket No. AT-831E-03-0503-I-1
Party: Appellant's Representative

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Montgomery, AL 36104

UNITED STATES OF AMERICA
MERIT SYSTEMS PROTECTION BOARD

MARY M. HOFF,
Appellant,

DOCKET NUMBER
AT-831E-03-0503-I-1

v.

OFFICE OF PERSONNEL MANAGEMENT,
Agency.

DATE: Dec. 30, 2003

(CSA 4 026 898)

Michael J. Petersen, Esquire, Montgomery, Alabama, for the appellant.

Thomas L. Styer, Washington, D.C., for the agency.

BEFORE

Neil A.G. McPhie, Acting Chairman
Susanne T. Marshall, Member

FINAL ORDER

The appellant has filed a petition for review in this case asking us to reconsider the initial decision issued by the administrative judge. We grant petitions such as this one only when significant new evidence is presented to us that was not available for consideration earlier or when the administrative judge made an error interpreting a law or regulation. The regulation that establishes this standard of review is found in Title 5 of the Code of Federal Regulations, section 1201.115 (5 C.F.R. § 1201.115).

After fully considering the filings in this appeal, we conclude that there is no new, previously unavailable,

evidence and that the administrative judge made no error in law or regulation that affects the outcome. 5 C.F.R. § 1201.115(d). Therefore, we DENY the petition for review. The initial decision of the administrative judge is final. This is the Board's final decision in this matter. 5 C.F.R. § 1201.113.

NOTICE TO THE APPELLANT REGARDING YOUR FURTHER REVIEW RIGHTS

You have the right to request the United States Court of Appeals for the Federal Circuit to review this final decision. You must submit your request to the court at the following address:

United States Court of Appeals
for the Federal Circuit
717 Madison Place, N.W.
Washington, DC 20439

The court must receive your request for review no later than 60 calendar days after your receipt of this order. If you have a representative in this case, and your representative receives this order before you do, then you must file with the court no later than 60 calendar days after receipt by your representative. If you choose to file, be very careful to file on time. The court has held that normally it does not have the authority to waive this statutory deadline and that filings that do not comply with the deadline must be dismissed. *See Pinat v. Office of Personnel Management,* 931 F.2d 1544 (Fed. Cir. 1991).

If you need further information about your right to appeal this decision to court, you should refer to the federal law that gives you this right. It is found in Title 5 of the United States Code, section 7703 (5 U.S.C. § 7703).

You may read this law as well as review the Board's regulations and other related material at our web site, http://www.mspb.gov/mspb_library.html.

FOR THE BOARD: /s/ Matthew Shamm
Bentley M. Roberts, Jr.
Clerk of the Board

Washington, D.C.

CERTIFICATE OF SERVICE

I certify that this ORDER was sent today:

By certified mail to:

Michael J. Petersen, Esq.
Petersen Law Office, LLC.
631 South Perry Street
Montgomery, AL 36104

By regular mail to:

Mary M. Hoff
1508 Amoy Court
Montgomery, AL 36110

Thomas L. Styer
Office of Retirement Programs
Reconsideration and Appeals Branch
Office of Personnel Management
P.O. Box 664
Washington, DC 20044

Kenneth L. Bates
U.S. Office of Personnel Management
Employee Relations Division
1900 "E" Street, N.W., Room 7412
Washington, DC 20415

Merit Systems Protection Board
Atlanta Regional Office
401 West Peachtree Street, N.W.
Suite 1050
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By hand to:

Office of the Special Counsel
1730 M Street, N.W.
Suite 201
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December 30, 2003 (Date)

/s/ Jacquelin Wilson
Jacquelin Wilson
Legal Assistant

Washington, DC

Docket No : AT-831E-03-0503-I-1
Participant Type : Private Attorney

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